

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Lane, Suite 101
San Luis Obispo, California 93401**

COMPLAINT NO. R3-2004-0103

**MANDATORY PENALTY
IN THE MATTER OF
CALIFORNIA DEPARTMENT OF CORRECTIONS
CALIFORNIA MEN'S COLONY
SAN LUIS OBISPO COUNTY**

This complaint to assess Mandatory Minimum Penalties pursuant to Water Code section 13385(h) and (i) is issued to the California Department of Corrections, California Men's Colony (Discharger), based on a finding of violations of Waste Discharge Requirements Order No. 01-001, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0047856.

The Executive Officer finds the following:

1. On February 2, 2001, the Regional Water Quality Control Board, Central Coast Region (Regional Board), adopted *Waste Discharge Requirements Order No. 01-001, NPDES Permit No. CA0047856, for California Department of Corrections, California Men's Colony, San Luis Obispo County* (Order No. 01-001).
2. California Water Code section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation.
3. California Water Code section 13385(i) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in a consecutive six-month period:
 - a) Exceeds a waste discharge requirement effluent limitation;
 - b) Fails to file a report pursuant to Section 13260;
 - c) Files an incomplete report pursuant to Section 13260; or
 - d) Exceeds a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
4. California Water Code section 13385(l) states that "(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the...regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).
5. California Water Code section 13385(h)(2) provides a serious violation occurs if the discharge exceeds the effluent limitations for a Group II pollutant, as specified in Appendix A to section 123.45 of Title 40 Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to section 123.45 of Title 40 Code of Federal Regulations, by 40 percent or more.

6. Order No. 01-001 includes in part the following:

Effluent Limitation No. 1:

“Effluent daily dry weather flow rate shall not exceed a 30-day average of 1.2 MGD...”

Effluent Limitation No. 2:

“...effluent shall not exceed the following limits:

Constituent	Units	Monthly (30-Day) Average	Weekly (7-Day) Average	Daily Maximum
BOD ₅	lbs/day	100	300	500

Effluent Limitation No. 4:

“Effluent shall not have a pH less than 6.5 or greater than 8.3.”

Effluent Limitation No. 5:

“Effluent shall not have a dissolved oxygen concentration of less than 2.0 mg/L.”

Effluent Limitation No. 6:

“Effluent shall not have a measurable chlorine residual (greater than 0.1 mg/L).¹”

Effluent Limitation No. 8:

“...The maximum number of coliform organisms shall not exceed 240 [MPN] per 100 milliliters.”

7. BOD₅ and Flow are Group I Pollutants. Chlorine Residual is a Group II Pollutant. Total Coliform Organisms, pH, and Dissolved Oxygen are neither Group I or Group II Pollutants.
8. Effluent containing constituent values that are greater than or equal to the following values (limit + 40% for Group I pollutants, limit + 20% for Group II pollutants) are serious violations:

Constituent	Serious Threshold
Effluent daily dry weather flow rate, 30-Day Average	1.68 MGD
BOD ₅ , Monthly (30-Day) Average	140 lbs/day 30-Day Average
Chlorine Residual, Instantaneous Maximum	2.4 mg/L

¹ Footnote No. 1 of Monitoring and Reporting Program No. 01-001 states, “Compliance determinations for total chlorine residual shall be based on 99% compliance. To determine 99% compliance with the effluent limitation specified above for total chlorine residual, the following conditions shall be satisfied: (1) The total time during which the total chlorine residual values are above 0.1 mg/L (instantaneous maximum value) shall not exceed 7 hours and 26 minutes in any calendar month; (2) No individual excursion from 0.1 mg/L shall exceed 30 minutes; and (3) No individual excursion shall exceed 2 mg/L.”

9. Effluent containing constituent concentrations that are less than the serious threshold but greater than the permit limits, are chronic violations.
10. According to monitoring reports submitted by the Discharger, the Discharger committed the following violations of effluent limitations of Order No. 01-001 in the period July 1, 2002 through March 31, 2004:

#	Violation Date	Constituent	Permitted Limit	Reported Value	Violation Type
1	7/4/02	Total Coliform	240 MPN/100 mL Maximum	900 MPN/100 mL	Chronic
2	7/31/02	Effluent Flow	1.2 MGD 30-Day Average	1.275 MGD	Chronic
3	1/15/03	Chlorine Residual	No measurable chlorine residual (<0.1 mg/L).	0.41 mg/L	Chronic
4	5/6/03	Dissolved Oxygen	Greater than 2.0 mg/L	0.7 mg/L	Chronic
5	8/12/03	Dissolved Oxygen	Greater than 2.0 mg/L	0.2 mg/L	Chronic
6	10/3/03	Chlorine Residual	No measurable chlorine residual (<0.1 mg/L)	1.2 mg/L	Chronic
7	10/7/03	pH	6.5 – 8.3	6.2	Chronic*
8	10/20/03	Chlorine Residual	No measurable chlorine residual (<0.1 mg/L)	3.5 mg/L	Serious
9	11/12/03	Chlorine Residual	No measurable chlorine residual (<0.1 mg/L)	2.2 mg/L	Chronic*
10	11/14/03	Total Coliform	240 MPN/100 mL Maximum	500 MPN/100 mL	Chronic*
11	2/25/04	BOD ₅	100 lbs/day 30-Day Average	122 lbs/day	Chronic*

* denotes chronic violations subject to Mandatory Minimum Penalties.

11. According to Finding No. 10, the Discharger committed one (1) serious violation in the period July 1, 2002 through March 31, 2004. The amount of the mandatory penalty for the serious violations (1 x \$3,000) is three thousand dollars (\$3,000).
12. According to Finding No. 10, the Discharger committed seven (7) chronic violations in the period May 1, 2003 through March 31, 2004. California Water Code section 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation, not counting the first three, occurring in a consecutive six-month period. The mandatory minimum penalty for the above chronic violations (7 - 3 = 4 x \$3,000) is twelve thousand dollars (\$12,000).
13. The total amount of the mandatory penalty for violations occurring in the period July 1, 2002 through March 31, 2004 (\$3,000 + \$12,000) is fifteen thousand dollars (\$15,000).

**THE CALIFORNIA DEPARTMENT OF CORRECTIONS, CALIFORNIA MEN'S COLONY IS
HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed a Mandatory Penalty in the amount of fifteen thousand dollars (\$15,000).
2. The Regional Board shall hold a public hearing on September 10, 2004, unless the Discharger agrees to waive its right to a public hearing by filling out, signing, and submitting the enclosed "Waiver of Hearing". If the Discharger chooses not to waive its right to a public hearing, the Regional Board may proceed with the scheduled public hearing and consider testimony received from interested persons during the public hearing and decide whether to accept the amount of Mandatory Penalty proposed by the Executive Officer or increase the liability. The Regional Board may also decide to continue the matter to a future hearing or refer it to the State Attorney General. The public hearing is scheduled at the regularly scheduled Regional Board meeting on September 10, 2004, at the Regional Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California. The meeting is scheduled to begin at 8:30 a.m.; however, no specific time has been set for consideration of this item.

If you have questions regarding this matter, please direct them to Regional Board staff, **Matt Thompson, at (805) 549-3159**, or Regional Board Counsel, Lori Okun, at (916) 341-5165.

Roger W. Briggs
Executive Officer

Date

**PROCEDURAL INFORMATION
FOR
MANDATORY MINIMUM PENALTY COMPLAINT
PUBLIC HEARING AND PAYMENT**

WAIVER OF PUBLIC HEARING

You may waive your right to a public hearing. If you wish to waive your right to a public hearing, a duly authorized person² must check, sign, and submit the following *Waiver of the Right to a Public Hearing* form and pay the mandatory minimum penalty amount specified in the Complaint **no later than July 23, 2004, 5:00 P.M.** Please follow the payment instructions below.

If you choose to waive your right to a public hearing, and if full payment and a signed *Waiver of the Right to a Public Hearing* form are received before the hearing, the hearing will not be held, and the violation will be settled. If full payment and a signed *Waiver of the Right to a Public Hearing* form are not received, the matter will be placed on the Regional Board's agenda for a hearing as stated below.

If you do not waive your right to a public hearing, the Executive Officer will present an Order to the Regional Board for the amount proposed in this Complaint at the Regional Board meeting on September 10, 2004, at the Regional Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California. The Regional Board will proceed with the scheduled hearing, consider testimony received from interested persons during the hearing, and decide whether to accept the amount of the mandatory minimum penalty proposed by the Executive Officer, or direct the Executive Officer to reissue the complaint alleging increased liability pursuant to Water Code Section 13385(c) and (e). If the proposed Order is adopted, payment of the mandatory minimum penalty to the State Water Resources Control Board will be due and payable no later than October 10, 2004, in accordance with the Order. If the proposed Order is rejected, the Regional Board may direct the Executive Officer to issue a new complaint and schedule another public hearing. The Regional Board may also decide to continue the matter to a future hearing or refer it to the State Attorney General. The meeting is scheduled to begin at 8:30 A.M.; however, no specific time has been set for consideration of the Order.

PAYMENT OF MANDATORY MINIMUM PENALTY

No later than July 23, 2004, please make your check payable to *State Water Resources Control Board*, and note "MMP Complaint No. R3-2004-0103" on the check. Please mail the check and signed waiver form to:

**SWRCB Accounting
Attn: Enforcement
P.O. Box 100
Sacramento, CA 95812-0100**

Please also mail copies of the check and signed waiver form to:

**Regional Water Quality Control Board
Attn: Matt Thompson
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401**

² A duly authorized person is defined as a principal executive officer of at least the level of vice president in a corporation, a general partner or the proprietor in a partnership or sole proprietorship, a principal executive officer or ranking elected official in a public agency, or a duly authorized representative.

WAIVER OF THE RIGHT TO A PUBLIC HEARING

- [] By checking this box, I agree to waive the California Department of Corrections, California Men's Colony's right to a public hearing before the Regional Board with regard to the violations alleged in Complaint for Mandatory Minimum Penalty No. R3-2004-0103. I agree to provide payment of the mandatory minimum penalty for the amount proposed in Complaint for Mandatory Minimum Penalty No. R3-2004-0103. I understand that I am giving up the California Department of Corrections, California Men's Colony's right to be heard, and its right to argue against the allegations made by the Executive Officer in Complaint for Mandatory Minimum Penalty No. R3-2004-0103, and against the imposition of, or the amount of, the mandatory minimum penalty proposed.

Signature

Printed Name

Title/Position

Date